



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2014-0386]

RIN 1625-AA09

Drawbridge Operation Regulation; Taylor Bayou Outfall Canal
(Joint Outfall Canal), TX

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is implementing an operating schedule that governs the Valero pontoon-supported swing bridge across Taylor Bayou Outfall Canal (Joint Outfall Canal (JOC)), mile 2.44, West Port Arthur, Jefferson County, Texas. This bridge provides for Valero's maintenance vehicles to cross the waterway. The regulation will allow the bridge to remain in the open-to-navigation position except during two scheduled daily closures. This regulation increases the efficiency of operations allowing for the safe navigation of vessels through the bridge while recognizing the bridge's importance to the facility that it serves.

DATES: This interim rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PULICATION IN THE FEDERAL REGISTER].

Comments and related material must reach the Coast Guard on or before November 15, 2014.

ADDRESSES:

You may submit comments, identified by docket number, using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: (202) 493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. James Wetherington; Bridge Administration Branch, Eighth Coast Guard District; telephone 504-671-2128, e-mail james.r.wetherington@uscg.mil If you have questions on viewing or submitting material to the docket, call

Cheryl F. Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
USCG	United States Coast Guard
NEPA	National Environmental Policy Act
NPRM	Notice of Proposed Rule Making
§	Section Symbol
U.S.C.	United States Code
JOC	Joint Outfall Canal

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2014-0386), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or

hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number (USCG-2014-0386) in the "SEARCH" box and click "SEARCH." Then click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2014-0386) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the docket using one of the four methods specified under ADDRESSES. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a

later notice in the Federal Register.

B. Regulatory History and Information

The Coast Guard is issuing this interim final rule without prior notice pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest."

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not completing the full notice of proposed rulemaking (NPRM) process with respect to this rule. This bridge is replacing a previously demolished temporary removable-span bridge located approximately 200 yards upstream. The temporary bridge was a removable-span bridge that remained in place during the day and was removed with a crane when passage was required. This process took a minimum of 10 minutes. While in the closed position, the bridge had a vertical clearance of five feet and a horizontal clearance of 35 feet. At night, the removable span was completely removed allowing a clear channel of 35 feet for the passage of vessels with an unlimited vertical clearance. In preparation for the new bridge, the bridge owner coordinated with waterway users and local facilities and agencies to develop an operating schedule. Based upon this coordination, the bridge

owner requested a special operating regulation for this bridge to best serve the maritime and land users as well as local authorities that have an interest in this waterway. As a result, the new bridge will remain in the open-to-navigation position at all times except during two daily scheduled closures. These closures allow for access to Valero's property for required scheduled maintenance and testing. Notice of each closure will include sound signals and two broadcasts - the first at one hour before closure and the second at 10 minutes before closure.

Because of the efforts of the bridge owner to coordinate this schedule with those using the bridge and waterway, it would be impracticable to complete the full NPRM process, delaying the effective date for this rule and the coordinated operating schedule. Additionally, this rule allows the bridge owner use of the bridge while accommodating the waterway users more efficiently without the need for a full-time tender. There is also opportunity to comment on this interim rule before its effective date and during the first few weeks that the operating schedule is in effect. This comment period allows for comments on how the new schedule is working before making the rule final. Finally, because this operating schedule has been coordinated with waterway users in the area, no adverse comments are anticipated. The bridge is expected to be complete and fully

operational by late October, 2014.

C. Basis and Purpose

The Coast Guard received a request from the Premcor Refining Group, Inc. - A Valero Company to create a special operating schedule for the new Valero pontoon-supported swing bridge across Taylor Bayou Outfall Canal (JOC), mile 2.44, West Port Arthur, Jefferson County, Texas. Per 33 CFR 117.41(b), the bridge owner would like to allow the bridge to remain open except for two scheduled daily closures.

This change will allow the bridge owner to leave the bridge in the open-to-navigation position while removing the requirement that a bridge tender be on the bridge at all times. Notices for each closure will include sound signals and two broadcasts - the first at one hour before closure and the second at 10 minutes before closure. The bridge is a pontoon-supported swing bridge that will remain in the open-to-navigation position except during two daily maintenance cycles. The bridge will have unlimited vertical clearance in the open-to-navigation position and a vertical clearance of 11.11 feet in the closed-to-navigation position. The new bridge will have a horizontal clearance of 75.0 feet from fender to fender in the open-to-navigation position and 52 feet from pontoon to fender in the closed-to-navigation position.

The purpose of the bridge is to allow Valero access to its property for daily operations and maintenance. The bridge will only be in the closed-to-navigation position during daily scheduled maintenance times unless there is an emergency that requires access to the other side of the waterway. The one-hour closure request includes two 15-minute bridge cycling periods with a 30-minute allowance for maintenance work. It would be impracticable to open the bridge during the 30-minute maintenance period as it requires 30 minutes to fully cycle the bridge.

Traffic on this waterway is primarily recreational craft and commercial barges. Valero engaged the owners of these vessels through multiple discussions leading to the design and operating schedule of this bridge.

D. Discussion of Interim Rule

This interim rule allows the bridge to be unmanned and maintained in the fully-open-for-navigation position at all times, with the exception of two one-hour closures each day. These scheduled bridge closures will occur from 6:30 a.m. to 7:30 a.m. and from 5:30 p.m. to 6:30 p.m. Notices for each closure will include sound signals and two broadcasts - the first at one hour before closure and the second at 10 minutes before closure. Additionally, the bridge can be opened in 30 minutes if there is an emergency on the waterway during the

scheduled closure times. Any other emergencies that require vehicular access to the other side of the waterway outside of the normal operating schedule require notice to the Coast Guard and broadcasts by the bridge owner stating the bridge is to be closed due to an emergency. Additionally, visual verification that the waterway is clear prior to the operation of the bridge is required.

E. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This rule allows the bridge to remain in the open-to-navigation position at all times with the exception of two scheduled closures each day to allow for vehicular traffic. Because the bridge will be left in the open position and only

closed to vessel traffic for two hours per day, one hour in the morning and one hour in the early evening, this regulation will have a minimal effect on the waterway users and vessels transiting the area. Additionally, the bridge can be opened in 30 minutes should there be emergency need during one of the scheduled closures.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the property owners, vessel operators and waterway users who wish to transit on Taylor Bayou Outfall Canal (JOC) past mile 2.44 from 6:30 a.m. to 7:30 a.m. and from 5:30 p.m. to 6:30 p.m. daily. This rule will not have a significant impact on a substantial number of small entities for the following reasons because, through pre-coordination and consultation with property owners, vessel operators and waterway users, this operating schedule will accommodate all waterway users with minimal impact.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect

on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Add § 117.988 to read as follows:

§117.988 Taylor Bayou Outfall Canal (Joint Outfall Canal (JOC)).

The draw of the Valero Bridge, mile 2.44, at the Valero facility in West Port Arthur, shall operate as follows:

(a) The draw shall be unmanned and maintained in the fully open-to-navigation position, except 6:30 a.m. through 7:30 a.m. and 5:30 p.m. through 6:30 p.m. daily.

(b) One hour prior to closing, a broadcast will be made warning of the impending closure on VHF-FM channels 16 and 13.

(c) 10 minutes prior to closing, the broadcast will be repeated warning of the impending closure on VHF-FM channels 16 and 13.

(d) The crewmember/tender will monitor the portable marine radio on approach to the bridge. When work crew approaches the bridge, it will stop and the crewmember/tender will observe the waterway for approaching vessels. If vessels are observed approaching the bridge, they will be allowed to pass prior to closing the bridge.

(e) An audible alarm will be heard during the opening and closing sequences of the bridge.

(f) Emergency marine traffic will be allowed to pass upon request. The bridge will require up to 30 minutes to cycle to allow for the passage of vessels. This request can be made on VHF-FM channel 16.

Dated: September 2, 2014

KEVIN S. COOK

Rear Admiral, U.S. Coast Guard

Commander, Eighth Coast Guard District

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Date: 09/23/2014]